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General Assembly

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United Nations Commission on International Trade Law
Working Group on Arbitration
Thirty-third session
Vienna, 20 November – 1 December 2000

PROVISIONAL AGENDA

1. Election of officers

2. Adoption of the agenda

3. Preparation of harmonized texts on: written form for arbitration agreements; interim measures of protection; and conciliation

3. Other business

5. Adoption of the report

Notes on the provisional agenda

1. The Commission, during its thirty-first session, held a special commemorative New York Convention Day on 10 June 1998 to celebrate the fortieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958). In addition to representatives of States members of the Commission and observers, some 300 invited persons participated in the event. The Secretary-General made the opening speech. In addition to speeches by participants in the diplomatic conference that had adopted the Convention, leading arbitration experts presented reports on matters such as the promotion of the Convention, its enactment and application. Reports were also made on matters beyond the Convention itself, such as the interplay between the Convention and other international legal texts on international commercial arbitration and on difficulties encountered in practice but addressed in existing legislative or non-legislative texts on arbitration.[1]

2. In reports presented at the commemorative conference, various suggestions were made for presenting to the Commission some of the problems identified in practice so as to enable it to consider whether any related work by the Commission would be desirable and feasible. The Commission, at its thirty-first session in 1998, with reference to the discussions at the New York Convention Day,

[1] *Enforcing Arbitration Awards under the New York Convention: Experience and Prospects* (United Nations publication, Sales No. E.99.V.2).

considered that it would be useful to engage in a discussion of possible future work in the area of arbitration at its thirty-second session. It requested the Secretariat to prepare a note that would serve as a basis for the considerations of the Commission.[2]

3. At its thirty-second session, in 1999, the Commission had before it the requested note, entitled "Possible future work in the area of international commercial arbitration" (A/CN.9/460).[3] Welcoming the opportunity to discuss the desirability and feasibility of further development of the law of international commercial arbitration, the Commission had generally considered that the time had arrived to assess the extensive and favourable experience with national enactments of the UNCITRAL Model Law on International Commercial Arbitration (1985), as well as the use of the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules, and to evaluate in the universal forum of the Commission the acceptability of ideas and proposals for improvement of arbitration laws, rules and practices.[4]

4. When the Commission discussed the topic, it left open the question of what form its future work might take. It was agreed that decisions on the matter should be taken later as the substance of proposed solutions became clearer. Uniform provisions might, for example, take the form of a legislative text (such as model legislative provisions or a treaty) or a non-legislative text (such as a model contractual rule or a practice guide). It was stressed that, even if an international treaty were to be considered, it was not intended to be a modification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).[5]

5. The Commission entrusted the work to one of its three working groups, which it named Working Group on Arbitration, and decided that the priority items for the Working Group should be conciliation,[6] requirement of written form for the arbitration agreement,[7] enforceability of interim measures of protection[8] and possible enforceability of an award that had been set aside in the State of origin.[9] The Working Group on Arbitration (previously named Working Group on International Contract Practices) commenced its work at its thirty-second session in Vienna from 20 to 31 March 2000 (the report of that session is contained in document A/CN.9/468).

6. The Working Group considered the possible preparation of harmonized texts on conciliation, interim measures of protection, and on the written form of arbitration agreements. On these three topics the Working Group made decisions, which the Secretariat was requested to use in preparing drafts for the current session of the Working Group. In addition, the Working Group exchanged preliminary views on other topics that might be taken up in the future (document A/CN.9/468, paras. 107-114).

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[2] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17* (A/53/17), para. 235.

[3] The note drew on ideas, suggestions and considerations expressed in different contexts, such as the New York Convention Day (*Enforcing Arbitration Awards under the New York Convention: Experience and Prospects*, United Nations publication, Sales No. E.99.V.2); the Congress of the International Council for Commercial Arbitration, Paris, 3-6 May 1998 (*Improving the Efficiency of Arbitration Agreements and Awards: 40 Years of Application of the New York Convention, International Council for Commercial Arbitration Congress Series No. 9*, Kluwer Law International, 1999); and other international conferences and forums, such as the 1998 "Freshfields" lecture: Gerold Herrmann, "Does the world need additional uniform legislation on arbitration?" *Arbitration International*, vol. 15 (1999), No. 3, p. 211.

[4] *Ibid., Fifty-fourth Session, Supplement No. 17 (A/54/17)*, para. 337.

[5] *Ibid.*, paras. 337-376 and 380.

[6] *Ibid.*, paras. 340-343.

[7] *Ibid.*, paras. 344-350.

[8] *Ibid.*, paras. 371-373.

[9] *Ibid.*, paras. 374-375.

7. The Commission, at its thirty-third session (New York, 12 June – 7 July 2000), commended the work of the Working Group accomplished sc far. The Commission heard various observations to the effect that the work on the items on the agenda of the Working Group was timely and necessary in order to foster the legal certainty and predictability in the use of arbitration and conciliation in international trade. It noted that the Working Group had also identified a number of other topics, with various levels of priority, that had been suggested for possible future work (document A/CN.9/468, paras. 107-114). The Commission reaffirmed the mandate of the Working Group to decide on the time and manner of dealing with them.

8. Several statements were made to the effect that, generally, the Working Group, in deciding the priorities of the future items on its agenda, should pay particular attention to what was feasible and practical and to issues where court decisions left the legal situation uncertain or unsatisfactory. Topics that were mentioned in the Commission as potentially worthy of consideration, in addition to those that the Working Group might identify as such, were the meaning and effect of the more-favourable-right provision of article VII of the 1958 New York Convention (A/55/17, para. 109 (k)); raising claims in arbitral proceedings for the purpose of set-off and the jurisdiction of the arbitral tribunal with respect to such claims (ibid., para. 107 (g)); freedom of parties to be represented in arbitral proceedings by persons of their choice (ibid., para. 108 (c)); residual discretionary power to grant enforcement of an award notwithstanding the existence of a ground for refusal listed in article V of the 1958 New York Convention (ibid., para. 109 (i)); and the power by the arbitral tribunal to award interest (ibid., para. 107 (j)). It was noted with approval that, with respect to "on-line" arbitrations (i.e. arbitrations in which significant parts or even all of arbitral proceedings were conducted by using electronic means of communication) (ibid., para. 113), the Working Group on Arbitration would cooperate with the Working Group on Electronic Commerce. With respect to the possible enforceability of awards that had been set aside in the State of origin (ibid., para. 107 (m)), a view was expressed that the issue was not expected to raise many problems and that the case law that gave rise to the issue should not be regarded as a trend.

9. The Working Group on Arbitration is composed of all States members of the Commission. These are:

Algeria, Argentina, Australia, Austria, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, China, Colombia, Egypt, Fiji, Finland, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Nigeria, Paraguay, Romania, Russian Federation, Singapore, Spain, Sudan, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Item 1. Election of officers

10. The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3. Preparation of uniform provisions on: written form for arbitration agreements, interim measures of protection, and conciliation

11. The Working Group will have before it, and may wish to use as a basis for its deliberations, the following documents:

(a) Report of the Secretary-General: Preparation of uniform provisions on: written form for arbitration agreements, interim measures of protection, and conciliation (A/CN.9/WG.II/WP.110);

(b) Report of the Secretary-General: Possible future work: uniform rules on the issuance of interim measures of protection by courts in support of arbitration (A/CN.9/WG.II/WP.111).

Item 5. Adoption of the report

12. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-third session of the Commission (to be held from 25 June to 13 July 2001, in Vienna).

Dates and scheduling of meetings

13. The session of the Working Group on Arbitration will take place from 20 November to 1 December 2000 at the Vienna International Centre.*

14. There will be 8 working days available for consideration of the agenda item 3. No meeting will be scheduled for Thursday, 30 November, in order to allow for the preparation of the draft report of the session, which will be adopted on Friday, 1 December. Meeting hours will be from 9.30 to 12:30 and from 14:00 to 17:00, except on Monday, 20 November 2000, when the session will commence at 10:00 a.m.

15. It is suggested that the Working Group commence on 20 November with the discussion of the written form of an arbitration agreement, to take up interim measures of protection sometime on 22 November, as appropriate, and to consider conciliation on 27, 28 and 29 November. Possible future items of work (including uniform rules on the issuance of interim measures of protection by courts in support of arbitration) may be considered, time permitting, during the second half of the first week of the session. It should be noted that this suggestion is intended to assist States members and observers in planning the attendance of their pertinent representatives, but that the final actual scheduling will be determined by the Working Group itself.

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* This will be the thirty-third session of the Working Group, previously named Working Group on International Contract Practices. The session is scheduled to take place in Vienna, despite the fact that the previous (i.e. thirty-second) session of the Working Group also took place in Vienna (20-31 March 2000) rather than in New York (as the regular alternating pattern of sessions would call for) because, as a result of construction works, no conference facilities were available at Headquarters in New York in the spring of 2000. The thirty-fourth session of the Working Group is scheduled to take place in New York from 21 May to 1 June 2001.